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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2069/2011

Views adopted by the Committee at its 112th session (7–31 October 2014)

Submitted by:	Tatiana Shikhmuradova on behalf of her husband, Boris Shikhmuradov (not represented by counsel)
Alleged victim:	The author, and her husband
State party:	Turkmenistan
Date of communication:	28 April 2011 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 4 July 2011 (not issued in document form)
Date of adoption of Views:	17 October 2014
Subject matter:	Enforced disappearance of the author's husband; torture; habeas corpus; unfair trial
Substantive issues:	Right to life, prohibition of torture and cruel and inhuman treatment, right to liberty and security of the person, right to a fair trial, principle of non-retroactivity, protection against unlawful interference with family
Procedural issues:	State party's failure to cooperate
Articles of the Covenant:	6 (para. 1); 7; 9; 14 (paras. 1 and 5); 15; 17
Article of the Optional Protocol:	5 (para. 2 (a))

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (112th session)

concerning

Communication No. 2069/2011*

Submitted by:	Tatiana Shikhmuradova on behalf of her husband, Boris Shikhmuradov (not represented by counsel)
Alleged victim:	The author, and her husband
State party:	Turkmenistan
Date of communication:	28 April 2011 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 17 October 2014,

Having concluded its consideration of communication No. 2069/2011, submitted to the Human Rights Committee by Tatiana Shikhmuradova on behalf of her husband, Boris Shikhmuradov, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication, dated 28 April 2011, is Tatiana Shikhmuradova, a national of the Russian Federation. She submits the communication on behalf of her husband, Boris Shikhmuradov, also a Russian national, who was born in 1949, and claims that she has had no contact with her husband since his imprisonment in 2002 in Turkmenistan and that his current whereabouts are unknown. She claims violations by Turkmenistan of her husband's rights under article 6 (para. 1), article 7, article 9, article 14 (paras. 1 and 5), and article 15, of the Covenant; and of her rights under articles 7 and 17 of

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Ahmed Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Fabián Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.
The text of an individual opinion by Committee member Fabián Omar Salvioli (concurring) is appended to the present Views.

the Covenant. The Optional Protocol entered into force for Turkmenistan on 1 August 1997. The author is not represented by counsel.

The facts as submitted by the author

2.1 Mr. Shikhmuradov served, at various times, as Deputy Prime Minister of Turkmenistan, as Minister of Foreign Affairs of Turkmenistan, and as Ambassador Extraordinary and Plenipotentiary of Turkmenistan to the People's Republic of China. On 11 October 2001, he arrived in Moscow from Beijing, and a few days later was invited to go to Ashgabat to celebrate Turkmenistan's Independence Day on 27 October 2001. However, he was hospitalized in Moscow's Central Clinical Hospital with a suspected thrombosis of the lower extremities. He was invited by the Minister Counsellor of the Embassy of Turkmenistan to the Russian Federation to write a statement outlining the reasons for his "failure to appear" at the celebrations. Instead, he wrote a resignation letter to the then President Niyazov, in connection with his forthcoming long-term medical treatment, and he remained in Moscow.

2.2 The author submits that, on 1 November 2001, Mr. Shikhmuradov issued a formal statement through the Russian media concerning his intention to create an open, democratic opposition to the regime in place in Turkmenistan through the establishment of the People's Democratic Movement of Turkmenistan. Soon after that statement, he received information that criminal proceedings were being instituted against him in Turkmenistan. The Prosecutor-General of Turkmenistan issued an arrest warrant against him on 2 November 2001, based on a criminal case pending against him since 30 June 2001 accusing him of a number of crimes including trafficking in arms and explosives. In June 2001, Mr. Shikhmuradov was still serving as Ambassador Extraordinary and Plenipotentiary of Turkmenistan to the People's Republic of China.

2.3 The author also submits that, at some point, Mr. Shikhmuradov travelled to Ashgabat. She is not sure about the exact date, because at that time, they were not in regular contact due to safety concerns. She had left Turkmenistan in March 2001.

2.4 On 25 November 2002, the official media in Turkmenistan published information about an alleged attempt on the President's life, and plans by the opposition to organize a campaign of civil disobedience to force him to hold democratic elections. In that information, Mr. Shikhmuradov was accused of being the mastermind behind the failed attack. On 25 December 2002, he was arrested in Ashgabat by the Ministry of National Security. The night before his arrest, he wrote a statement, which he transmitted abroad through his friends, indicating his intention to surrender to the authorities voluntarily so as to end the ongoing harassment against his relatives and friends. On 29 December 2002, the Supreme Court of Turkmenistan sentenced him to 25 years of imprisonment for attempting to overthrow the Government and assassinate the President.

2.5 On 30 December 2002, his sentence was changed, by decision of the People's Council, to life imprisonment, despite the fact that the Criminal Code of Turkmenistan did not provide for such a punishment.[1] More than 50 persons, including the brother of Mr. Shikhmuradov, were sentenced at the same trial within a month. There were numerous reports that they were severely tortured in detention. Mr. Shikhmuradov and many of his co-defendants have not been seen or heard of since 2002, despite continuous attempts by their relatives and international organizations to learn about their whereabouts and their condition.

[1] The President's proposal (following the life imprisonment sentence being pronounced) to change the Constitution and the Criminal Code was unanimously supported by all the delegates of the People's Council.

2.6 The author submits that on 30 December 2002, a video recording of Mr. Shikhmuradov's confessions was broadcast before the People's Council, in which he labelled himself and his associates as a "criminal group" and "mafia" and requested the harshest possible sentence. The author claims that, in the video, Mr. Shikhmuradov appeared to be under the influence of some kind of "mind-altering substance" and was allegedly forced to make such a statement. All delegates of the People's Council demanded the death penalty for Mr. Shikhmuradov. President Niyazov proposed applying a sentence of life imprisonment instead because, as he proclaimed, Turkmenistan was a democratic country.

2.7 Since 25 December 2002, the author has not received any information about Mr. Shikhmuradov, such as official court documents, trial transcripts, or copies of the sentence. Neither does she have information about the place of his eventual detention or his state of health. She repeatedly (on 17 March, 26 April, 15 June, 26 August and 14 September 2006 and continuing until 2010) requested the Prosecutor-General, the Ministry of Justice, the Ministry of Internal Affairs and the President of Turkmenistan to provide her with information, but those requests were ignored.[2] She has received no answers or replies, but she did receive acknowledgements of receipt of her complaints. She did not have any opportunity to appeal the court decision before the Turkmen courts. She has not returned to Turkmenistan since she left in March 2001 for the Russian Federation, and claims that no one could guarantee her freedom of movement and safety in Turkmenistan.

The complaint

3.1 The author submits that the State party has violated article 6, paragraph 1, of the Covenant, because Mr. Shikhmuradov's whereabouts remain unknown, and despite numerous requests, the State party's authorities did not provide any information. The author submits that because there has been no information for so long, she fears for Mr. Shikhmuradov's life.

3.2 The author also submits that the State party violated Mr. Shikhmuradov's rights under article 9 of the Covenant. She claims that Mr. Shikhmuradov was arrested under unknown circumstances and he was not able to challenge his detention before the court, his relatives were not informed about his detention, his life sentence included a five-year prohibition of contact with the outside world, he has had no possibility of having his deprivation of liberty reviewed, and he was imprisoned after an unfair trial — all in violation of article 9 of the Covenant.

3.3 Furthermore, the author claims that the State party violated Mr. Shikhmuradov's right to a fair trial, in violation of article 14, paragraph 1, of the Covenant. The trial started only four days after Mr. Shikhmuradov's arrest, and lasted only one day. Mr. Shikhmuradov was convicted based solely on his confession, which, the author claims, was obtained as a result of torture.

[2] A compilation prepared by the Office of the United Nations High Commissioner for Human Rights, dated 29 September 2008 (A/HRC/WG.6/3/TKM/2), reported that "in 2005, the General Assembly expressed its grave concern at credible reports on ongoing torture and mistreatment of detainees and poor conditions in prisons, and the failure to grant access to detainees to the International Committee of the Red Cross (ICRC) according to its usual terms, as well as to international monitors. The Special Rapporteur on the question of torture sent a communication in 2005 related to 62 individuals convicted in December 2002 and January 2003 to prison terms ranging between five years to life for their involvement in what the authorities described as an assassination attempt on the President in November 2002, and who continued to be held incommunicado, including without access to ICRC."

3.4 The author further submits that Mr. Shikhmuradov was sentenced twice, only a few days apart, without having sufficient time or opportunity to get acquainted with his criminal case. In violation of the principle of impartiality, the court, and then the People's Council, convicted him, without a hearing and in violation of the procedural norms and standards in place. In that respect, the author recalls that article 14, paragraph 5, of the Covenant, provides the right to every person convicted of a crime to have the conviction and sentence reviewed by a higher tribunal according to law. In this case, the Supreme Court of Turkmenistan acted as a first instance court and then, after a political and unfair consideration of the case, the author's husband's sentence of 25 years of imprisonment was changed to life imprisonment by the unanimous decision of a political body. The fact that a heavier sentence was imposed without any right to appeal constitutes a further violation of Mr. Shikhmuradov's fair trial rights.

3.5 The author also claims that the State party violated article 7 of the Covenant, because Mr. Shikhmuradov must have been tortured to force him to confess guilt in the video shown to members of the People's Council. At the time of his arrest, Mr. Shikhmuradov was already suffering from diabetes, hypertension and cardiovascular disease. In connection with those conditions, he needed special medical care which he did not receive. The author further claims to have personally been subjected to inhuman treatment herself, by not being informed of her husband's situation and therefore constantly living in anxiety and stress, also in violation of article 7 of the Covenant.

3.6 In addition, the author claims that the State party violated Mr. Shikhmuradov's right under article 15 of the Covenant when the People's Council imposed a heavier sentence than that available under the laws of Turkmenistan at the time of the alleged crimes.

3.7 Finally, the author alleges that her right under article 17 of the Covenant has been violated by the State party. She has not been able to obtain information about her husband's whereabouts, his state of health, or even simply whether or not he is still alive.

3.8 The author submits that she cannot travel to Turkmenistan, because she is concerned about her safety. She has requested information about her husband from the then President of Turkmenistan and from the current President. She also sent requests to the Prosecutor-General of Turkmenistan but received no response. She also asked for information from the Ministry of Justice of Turkmenistan, and the Embassy of Turkmenistan in the Russian Federation, and received no replies. The author therefore contends that she has exhausted all available and effective domestic remedies.

Lack of cooperation by the State party

4. On 7 February 2012, 14 May 2012 and 3 July 2012, the State party was requested to submit its observations on the admissibility and merits of the communication. The Committee notes that this information has not been received. It regrets the State party's failure to provide any information on the admissibility and/or merits of the author's claims. It recalls that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and indicating the measures, if any, that have been taken by the State party to remedy the situation. In the absence of a reply from the State party, the Committee must give due weight to those of the author's allegations that have been properly substantiated.[3]

[3] See, inter alia, communication No.1913/2009, *Abushaala* v. *Libya*, Views adopted on 18 March 2013, para. 6.1; communication No. 1751/2008, *Aboussedra* v. *Libyan Arab Jamahiriya*, Views adopted on 25 October 2010, para. 4; communication No. 1640/2007, *El Abani* v. *Libyan Arab Jamahiriya*,

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not the case is admissible under the Optional Protocol to the Covenant.

5.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee must ascertain that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the case of Mr. Shikhmuradov was submitted to the Working Group on Enforced or Involuntary Disappearances. The Committee recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights Council, and whose mandates are to examine and report publicly on human rights situations in specific countries or territories, or cases of widespread human rights violations worldwide, do not generally constitute an international procedure of investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.[4] Accordingly, the Committee considers that it is not precluded from examining the present case under this provision.

5.3 With regard to the exhaustion of domestic remedies, the Committee notes that, despite three reminders addressed to the State party, no observations on the admissibility and/or the merits of the communication have been received. In the circumstances, given the author's continuing unsuccessful efforts, and in the absence of a challenge by the State party to the admissibility of the communication, the Committee finds that it is not precluded from considering the communication under article 5, paragraph 2 (b), of the Optional Protocol.

5.4 As to the alleged violations of article 9 of the Covenant in relation to the initial detention of Mr. Shikhmuradov, the Committee considers that, even if the State party has not refuted the author's allegations, based on the limited information contained on file, the author's allegations have been insufficiently substantiated for the purposes of admissibility. Accordingly, it considers that this claim has been insufficiently substantiated and declares it inadmissible under article 2 of the Optional Protocol.

5.5 The Committee considers that the author's remaining claims regarding violations of Mr. Shikhmuradov's rights under article 6 (para. 1), article 7, article 9 in relation to his detention after his conviction, article 14 (paras. 1 and 5) and article 15, as well as the claims regarding the violation of the author's rights under articles 7 and 17, have been sufficiently substantiated for the purposes of admissibility. It therefore declares those claims admissible and proceeds to their examination on the merits.

Views adopted on 26 July 2010, para. 4; communication No. 1776/2008, *Bashasha* v. *Libyan Arab Jamahiriya*, Views adopted on 20 October 2010, para. 4.2; communication No. 1422/2005, *El Hassy* v. *Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 4; communication No. 1295/2004, *El Alwani* v. *Libyan Arab Jamahiriya*, Views adopted on 11 July 2007, para. 4; communication No. 1208/2003, *Kurbonov* v. *Tajikistan*, Views adopted on 16 March 2006, para. 4; and communication No. 760/1997, *Diergaardt et al.* v. *Namibia*, Views adopted on 25 July 2000, para. 10.2.

[4] See, inter alia, communication No. 1781/2008, *Berzig* v. *Algeria*, Views adopted on 31 October 2011, para. 7.2; communication No. 1776/2008, *Bashasha* v. *Libyan Arab Jamahiriya*, Views adopted on 20 October 2010, para. 6.2; and communication No. 540/1993, *Celis Laureano* v. *Peru*, Views adopted on 25 March 1996, para. 7.1.

Consideration of the merits

6.1 The Human Rights Committee has considered the present communication in the light of all information made available to it, in accordance with article 5, paragraph 1, of the Optional Protocol.

6.2 The Committee takes note of the author's claims regarding the arrest and interrogation of her husband, his subsequent trial and his enforced disappearance. The Committee also notes that the State party has not provided observations regarding any of these claims. The Committee reaffirms that the burden of proof cannot rest solely on the author of the communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to the relevant information.[5] It is implicit in article 4, paragraph 2, of the Optional Protocol, that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with the information available to it. In cases where the author has submitted allegations to the State party that are corroborated by credible evidence and where further clarification depends on information that is solely in the hands of the State party, the Committee may consider the author's allegations substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party.

6.3 The Committee notes that, based on the uncontested information provided by the author, Mr. Shikhmuradov was arrested, tried and sentenced to life imprisonment, and since that time, has not been able to communicate with his wife or any other members of the family. It further notes that it also remains uncontested that Mr. Shikhmuradov's whereabouts are unknown, and that his wife and his relatives do not have any information about his health or well-being, in spite of numerous attempts to contact different authorities. The author states that she is not even sure whether her husband is alive. The Committee notes that the State party has not refuted the author's allegation that, for 12 years, there was no contact with her husband, and the authorities never provided her with any indication regarding her husband's whereabouts. The Committee recalls its jurisprudence that, in cases of enforced disappearance, deprivation of liberty followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate of the disappeared person removes the person from the protection of the law and places his or her life at a serious and constant risk for which the State is accountable.[6] In the present case, the Committee notes that the State party has produced no evidence to show that it has met its obligation to protect the life of Mr. Shikhmuradov during the 12 years that have passed since his conviction. In the circumstances, due weight must be given to the author's allegations. Accordingly, the Committee concludes that the State party failed in its duty to protect Mr. Shikhmuradov's life, in violation of article 6, paragraph 1, of the Covenant.[7]

6.4 The Committee recognizes the degree of suffering involved in being held without contact with the outside world. It recalls its general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, which recommends that States parties should make provision against incommunicado detention. It notes that, in the present case, it remains uncontested that Mr. Shikhmuradov has been kept incommunicado in an undisclosed location, with no access to family, a lawyer or anyone from the outside world. The Committee also takes note of the author's claim in regard to

[5] *El Hassy* v. *Libyan Arab Jamahiriya*, para. 6.7; communication No. 1297/2004, *Medjnoune* v. *Algeria*, Views adopted on 14 July 2006, para. 8.3, and communication No. 1804/2008, *Il Khwildy* v. *Libya*, Views adopted on 1 November 2012, para. 7.2.

[6] *Abushaala* v. *Libya*, para. 6.2.

[7] *Il Khwildy* v. *Libya*, para. 7.12.

the video that was shown to the People's Council, in which Mr. Shikhmuradov allegedly appeared to be under the influence of "mind-altering" drugs. In these circumstances, considering Mr. Shikhmuradov's medical condition before the arrest and in the absence of information from the State party that would contradict the aforementioned, the Committee concludes that due weight must be given to the author's allegations. Accordingly, it concludes that the facts as presented reveal a violation of article 7 of the Covenant with respect to the author's husband.

6.5 Regarding the claim that Mr. Shikhmuradov's imprisonment since his conviction violated article 9, the Committee notes the author's claims that he has been held incommunicado in an unknown location without access to counsel and without the opportunity to challenge the lawfulness of his detention. In the absence of any information from the State party in that regard, the Committee considers that due weight must be given to the author's allegations. Accordingly, it concludes that the facts as presented reveal a violation of article 9 of the Covenant with respect to the author's husband.

6.6 With respect to the author's claims under article 14, the Committee notes that Mr. Shikhmuradov was sentenced first to 25 years of imprisonment, and that his trial was held on 29 December 2002, only four days after his arrest. The court hearing, according to the author, was not open to public, and lasted only one day, and the conviction was based solely on Mr. Shikhmuradov's forced confession. The Committee further notes that, after a separate and closed hearing the next day, on 30 December 2002, the People's Council sentenced Mr. Shikhmuradov to life imprisonment. The Committee notes the author's allegations that Mr. Shikhmuradov did not have sufficient time to prepare for his defence, could not consult his lawyers, and did not have an opportunity to have his conviction and sentence reviewed by a higher tribunal according to law. The Committee recalls that the Covenant gives everyone the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, and that equality of arms is an indispensable aspect of the fair trial principle.[8] The Committee notes the author's uncontested claim that the People's Council, a political body led by the President and including members of the Parliament and cabinet ministers, cannot be considered as a competent, independent and impartial tribunal, within the meaning and requirements of article 14, paragraph 1. In the absence of any information from the State party in that regard, the Committee considers that due weight must be given to the author's allegations. Accordingly, it concludes that the trial and the final conviction of Mr. Shikhmuradov in the circumstances described disclose a violation of article 14, paragraphs 1 and 5, of the Covenant.

6.7 In respect of article 15, paragraph 1, the Committee takes note of the author's allegations that the State party's authorities imposed a heavier penalty than that which was applicable at the time when the criminal offence was committed. The Committee notes the author's uncontested statement that the heaviest penalty under Turkmen law at the time of the alleged crimes was 25 years, in accordance with the Criminal Code of Turkmenistan that was then in force. The Committee also notes that life imprisonment as a penalty was enacted by the People's Council only after Mr. Shikhmuradov's conviction. Accordingly, the Committee concludes that the facts before it constitute a violation of Mr. Shikhmuradov's rights under article 15, paragraph 1, of the Covenant.

6.8 With regard to the author, the Committee notes the anguish and distress caused by the incommunicado detention and disappearance of her husband. Recalling its jurisprudence, the Committee concludes that the facts before it reveal a violation of article 7

[8] See, for example, communication No. 307/1988, *Campbell* v. *Jamaica*, Views adopted on 24 March 1993, para. 6.4.

of the Covenant with respect to the author.[9] Having come to this conclusion, the Committee decides not to consider separately the author's claims under article 17, paragraph 1, of the Covenant.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by the State party of article 6 (para. 1), article 7, article 9, and article 14 (paras. 1 and 5) with regard to Mr. Shikhmuradov. It also discloses a violation of article 7 of the Covenant with respect to the author.

8. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide Mr. Shikhmuradov and the author with an effective remedy including by (a) releasing him immediately if he is still being detained incommunicado; (b) conducting a thorough and effective investigation into his detention, disappearance and unfair trial; (c) providing him and the author with detailed information on the results of the investigation; (d) in the event that Mr. Shikhmuradov is deceased, handing over his remains to the author; (e) prosecuting, trying and, if convicted, punishing those responsible for the violations committed; and (f) providing adequate compensation to the author and Mr. Shikhmuradov for the violations suffered. The State party is also under an obligation to take steps to prevent similar violations in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views in the official language of the State party and to have them widely disseminated.

[9] See, for example, *El Abani* v. *Libyan Arab Jamahiriya*, para. 7.5.

Appendix

[Original: Spanish]

Individual opinion of Committee member Fabián Omar Salvioli (concurring)

1. I concur with the decision reached by the Committee in *Shikhmuradova* v. *Turkmenistan* (communication No. 2069/2011) whereby it declares that the State party bears international responsibility for having violated article 6 (para. 1), article 7, article 9, and article 14 (paras. 1 and 5), with regard to the author's husband, Boris Shikhmuradov, and article 7 with regard to the author, Tatiana Shikhmuradova, who has endured anguish and suffering as a result of the enforced disappearance of her husband.

2. However, it is my understanding that the Committee should have also found a violation of article 16 (the right to recognition as a person before the law), inasmuch as it has been established that Mr. Shikhmuradov has been the victim of one of the most abhorrent violations of human dignity: enforced disappearance. It should be emphasized that the enforced disappearance of Mr. Shikhmuradov constitutes a continuing offence, since his whereabouts are still not known.

3. Enforced disappearance is an complex violation which, by its nature, affects a number of the rights established under the International Covenant on Civil and Political Rights; one of those rights is clearly the right to recognition as a person before the law, since, in the case of a forcibly disappeared person, the State has intentionally placed that person outside the protection of the law.

4. Placing a victim outside the protection of the law is part of the international definition of enforced disappearance, as set forth in the final portion of article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, which was adopted by the General Assembly of the United Nations on 20 December 2006.

5. In 1997, the Committee adopted a legal position that links enforced disappearance with a violation of article 16 of the Covenant when certain circumstances exist. That jurisprudence, while requiring further development from a legal standpoint, has remained constant.[a, b]

6. Sufficient evidence of the presence of the relevant circumstances has been provided in this case. Mr. Shikhmuradov was arrested by agents of the Ministry of National Security on 25 December 2002 and has been in the power of the State ever since. The victim has not been seen since 2002, and his whereabouts remain unknown despite the efforts of his family. The victim has been unable to seek any remedy, and the remedies that his family members have sought to avail themselves of have proved to be futile and have been blocked.

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[a] See, inter alia, communication No. 1328/2004, *Kimouche* v. *Algeria*, Views adopted on 10 July 2007, para. 7.8.

[b] See *El Abani* v. *Libyan Arab Jamahiriya*, para. 7.9; communication No. 1327/2004, *Grioua* v. *Algeria*, Views adopted on 10 July 2007, para. 7.8; communication No. 1495/2006, *Madoui* v. *Algeria*, Views adopted on 28 October 2008, para 7.7; and communication No. 1782/2008, *Aboufaied* v. *Libya*, Views adopted on 21 March 2012, para. 7.10.

7. All these facts and events have been reported by the author (see paragraphs 2.1 to 2.7 of the communication), and the Committee considers them to have been proven. It also took into consideration the lack of cooperation on the part of the State party in respect of this communication (see para. 4 of the communication).

8. When confronted with the same types of facts, the Committee should reach the same types of conclusions. Its deliberations should not be confined to the legal arguments that are put forward, which the Committee is not obliged to heed or to regard as restricting its action.

9. It is impossible to explain why, on many occasions, the Committee confines itself to examining the legal arguments made by the parties, while in other cases, it rightly acts in accordance with the practices of global and regional international bodies and proceeds to undertake its own legal analysis of the facts which it considers to have been proven, even if the parties have not put forward the corresponding legal arguments.[c]

10. A correct approach to the present case from a legal standpoint would have led to the conclusion that, in addition to the findings arrived at by the Committee, the State has violated article 16 of the International Covenant on Civil and Political Rights in respect of Mr. Shikhmuradov.

11. I trust that the Committee will review its current inconsistent practices and define an approach that will allow it to duly perform the role with which it has been entrusted as a treaty body that monitors the fulfilment of the rights set forth in the International Covenant on Civil and Political Rights in accordance with the procedures set out in the Covenant and the Optional Protocol.

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[c] See, for example, the following cases considered by the Human Rights Committee: communication No. 1390/2005, *Koreba* v. *Belarus*, Views adopted on 25 October 2010; communication No. 1225/2003, *Eshonov* v. *Uzbekistan*, Views adopted on 22 July 2010, para. 8.3; communication No. 1206/2003, *R.M. and S.I.* v. *Uzbekistan*, Views adopted on 10 March 2010, paras. 6.3 and 9.2, in which no violation was found; communication No. 1520/2006, *Mwamba* v. *Zambia*, Views adopted on 10 March 2010; communication No. 1320/2004, *Pimentel et al.* v. *Philippines*, Views adopted on 19 March 2007, paras. 3 and 8.3; communication No. 1177/2003, *Wenga and Shandwe* v. *Democratic Republic of the Congo*, Views adopted on 17 March 2006, paras. 5.5, 6.5 and 9; communication No. 973/2001, *Khalilova* v. *Tajikistan*, Views adopted on 30 March 2005, para. 3.7; and communication No. 1044/2002, *Shukurova* v. *Tojikistan*, Views adopted on 17 March 2006, para. 3.